

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF SOUTH DAKOTA

3 SOUTHERN DIVISION

4 \* \* \* \* \*

Case No. 4:18-CR-40100-01,  
-03, -04, -05

5  
6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 -vs-

9  
10 WALLACE TANG,  
LASERLITH CORPORATION,  
11 BLACK HILLS NANOSYSTEMS CORPORATION,  
BLUE SKY ENGINEERING, INCORPORATED,

12 Defendants.

13  
14 U.S. Federal Courthouse  
15 Sioux Falls, SD  
January 14, 2019  
16 9:00 a.m.

\* \* \* \* \*

17 PUBLIC TRANSCRIPT OF  
18 SENTENCING HEARING

19 (PURSUANT TO STANDING ORDER 16-04, PORTIONS OF ALL  
CHANGE OF PLEA AND SENTENCING TRANSCRIPTS ARE RESTRICTED)

\* \* \* \* \*

20  
21 BEFORE: The Honorable Karen E. Schreier  
U.S. District Court Judge  
22 Sioux Falls, SD

23 APPEARANCES:

24 Mr. Jeremy R. Jehangiri  
U.S. Attorney's Office  
PO Box 2638  
25 Sioux Falls, SD 57101-2638  
for the Plaintiff

1 APPEARANCES: (Continued)

2  
3 Mr. Timothy W. Billion  
4 Robins Kaplan LLP  
5 140 North Phillips Avenue, Suite 307  
6 Sioux Falls, SD 57104  
7 local counsel for all defendants

8 Mr. Thomas F. Carlucci  
9 Foley & Lardner LLP  
10 555 California Street, Suite 1700  
11 San Francisco, CA 94104  
12 for Defendants Wallace Tang and  
13 Blue Sky Engineering, Incorporated

14 Mr. Noah F. Stern  
15 Gibson, Dunn & Crutcher LLP  
16 1881 Page Mill Road  
17 Palo Alto, CA 94304  
18 for Defendant Laserlith Corporation

19 Mr. Randall S. Luskey  
20 Orrick, Herrington & Sutcliffe  
21 405 Howard Street  
22 San Francisco, CA 94105  
23 for Defendant Black Hills Nanosystems  
24 Corporation

25 PRESENT: Defendant Wallace Tang

1                   \* \* \* \* \* JANUARY 14, 2019 \* \* \* \* \*

2                   (In open court, all counsel and Defendant Wallace  
3                   Tang present, at 9:00 a.m.)

4                   THE COURT: This is the time scheduled for a  
5                   sentencing in the matters entitled United States of  
6                   America vs. Black Hills Nanosystems Company, Laserlith  
7                   Company, Blue Sky Engineering, and Wallace Tang.

8                   Would counsel please note their appearances  
9                   for the record?

10                  MR. JEHANGIRI: Good morning, Your Honor.  
11                  Jeremy Jehangiri on behalf of the United States.

12                  MR. CARLUCCI: Good morning, Your Honor.  
13                  Thomas Carlucci on behalf of Blue Sky and  
14                  Wallace Tang.

15                  MR. LUSKY: Good morning, Your Honor.  
16                  Randy Lusky on behalf of Black Hills Nanosystems.

17                  MR. STERN: Good morning, Your Honor.  
18                  Noah Stern on behalf of Laserlith Corporation.

19                  MR. BILLION: Good morning, Your Honor.  
20                  Tim Billion, from Robins Kaplan, on behalf of all  
21                  Defendants.

22                  THE COURT: I thought I would do the  
23                  sentencings for Black Hills Nanosystems, Laserlith  
24                  Company, and Blue Sky Engineering first, and then do  
25                  the sentencing for Mr. Tang last.

1                   So Black Hills Nanosystems Company.

2           Mr. Lusky, did you have a chance to review the  
3           Presentence Report with your client?

4                   MR. LUSKY: I did, Your Honor.

5                   THE COURT: And there were no objections?

6                   MR. LUSKY: We have no objections.

7                   THE COURT: Under the report, there is no  
8           total offense level and no criminal history category.

9                   The defendant could be put on probation for  
10          a period of one to five years. The fine range is  
11          \$1.8 million to \$3,421,136.

12                  Restitution has been requested in the amount  
13          of \$1,084,418.60, and there's a \$400 special  
14          assessment. Do you agree?

15                  MR. LUSKY: We do, Your Honor.

16                  THE COURT: And the government had no  
17          objections. Is that correct?

18                  MR. JEHANGIRI: That's correct.

19                  THE COURT: Mr. Lusky, would you like to  
20          speak on behalf of your client?

21                  MR. LUSKY: Just briefly, Your Honor.

22                  I'll just make one point, which is that when  
23          the Court considers the history of the defendant here  
24          under the 3553(a) factors, I think it's important to  
25          note that one part of the story that's not told in the

1 information and the offense conduct, which really  
2 focuses on the 2012 to 2015 or '16 period, is that  
3 there was a chapter before that in the life of  
4 Black Hills, and that is in 2008 to 2012.

5 It was a company that set out to do the  
6 right thing. It was a company in those years that, as  
7 a small business, was employing upwards of 12 people  
8 here in South Dakota. The PSR makes mention of that  
9 in Paragraph 15.

10 It was a company that was doing real  
11 scientific work, real R&D for agencies like the DOD  
12 during that four-year period, 2008 to 2012, in  
13 South Dakota, working with the South Dakota School of  
14 Mines with South Dakota employees.

15 Then that all changed. In September of 2012  
16 funding dried up, and, admittedly, as detailed in the  
17 PSR, the company retreated to California. A lot of  
18 the work was done there. The company downsized here  
19 in South Dakota. And mistakes were made with respect  
20 to redundant work and description of place of work and  
21 all the items that are described in the PSR.

22 But I think it's important to consider,  
23 because it makes this case somewhat unlike other  
24 government contracting fraud cases, where you have  
25 companies that really never had any intent to do the

1 right thing. It was a true scam. They were just  
2 stealing government money and not doing any work.  
3 Here work was being done.

4 The last thing I'll say, with respect to the  
5 fine, we don't think any is warranted just because  
6 full restitution has been paid. The company has been  
7 shut down since late 2016. It has no income. Every  
8 dollar that it made, it spent on R&D and employees'  
9 salaries. But we'd defer to the court's judgment on  
10 that point.

11 So with that, Your Honor, submitted.

12 THE COURT: Mr. Jehangiri?

13 MR. JEHANGIRI: Your Honor, I just have  
14 brief comments with regard to some of the history.

15 I have no dispute with the history of the  
16 case leading up to about 2012. That's when things  
17 went to a different realm. That's why we're here in  
18 federal criminal court.

19 About 2012 earmarks dried up. When the  
20 earmarks dried up, the process by which companies  
21 applied to the federal government to obtain money went  
22 through this SBIR process and STTR process. In that  
23 process was when the fraud started taking place.

24 At the same time employees started being  
25 shifted from South Dakota and elsewhere throughout the

1 country back to California, and representations and  
2 certifications were then submitted to the government  
3 to obtain federal funds with these falsities embedded  
4 throughout all of these proposals.

5           Regardless of what company we're talking  
6 about, they are all one entity, one umbrella under  
7 Microassembly.

8           So they all sat in one similar room, cutting  
9 the same letterhead, all working on similar projects,  
10 but it all happened when the appropriations and the  
11 manner in which these companies obtained money from  
12 the federal government changed, and they had to go  
13 through a more arduous, more I guess detail-oriented  
14 process through this SBIR process. In doing so,  
15 that's when the certifications were being submitted on  
16 behalf of Black Hills and the others.

17           The parties here have arrived at I think a  
18 very favorable to all sides arrangement or plea  
19 agreement.

20           One, the restitution was paid in full at the  
21 plea hearing. I think that inures strongly in favor  
22 of Black Hills Nanosystems' acceptance of  
23 responsibility.

24           I'm not going to reiterate this every time  
25 we're talking about each corporation, but all of them

1       came to the table. It was a very transparent-type  
2       process, but they accepted responsibility.

3               The corporate representative behind  
4       Black Hills Nanosystems, Gina Kim, she's going to  
5       enter into a pretrial diversion.

6               Likewise, with Laserlith's representative,  
7       and I'll say the same thing about that individual.  
8       They accepted responsibility, paid restitution in  
9       full, and I think that inures greatly to their  
10      benefit.

11              I leave to the court the issue of a fine.  
12      I'm somewhat caught in kind of a weird query here, in  
13      that I'm not sure that we can fine -- a fine is  
14      applicable against a corporation that no longer  
15      exists. I don't even know how you'd collect.

16              I think this investigation shut down, in  
17      large part, I think Black Hills Nanosystems and  
18      Laserlith and Blue Sky Engineering -- MicroAssembly,  
19      while we're still trying to serve those folks, that's  
20      a whole another story -- but they're not even  
21      operating.

22              So I don't know that a fine could be  
23      imposed. I couldn't find any authority to do  
24      something like that. The corporations, none of these  
25      corporations and companies are in existence. There



1       isn't a mandatory fine.

2               So I think the restitution, as attributable  
3       and paid in full, Black Hills Nanosystems' portion of  
4       the restitution that was paid was \$421,926.60.

5               As the Court knows, we're going to make  
6       distributions. I'd ask that the judgment, with regard  
7       to Black Hills Nanosystems, reflects each federal  
8       agency victim's loss, and for purposes of the record,  
9       that loss, or the portion, that is, of the restitution  
10      from the \$1,084,418.60, I would ask that the judgment  
11      reflect that National Science Foundation receive  
12      \$812,656.00, that NASA receive \$124,942.77, and the  
13      Department of Energy receive \$146,819.83.

14              That's all I have, Your Honor.

15              THE COURT: Mr. Jehangiri, you mentioned  
16      earmarks. Is there someone from our legislative  
17      delegation that was pushing for an earmark?

18              MR. JEHANGIRI: I think earmarks were  
19      obtained from the delegation, federal delegation from  
20      South Dakota. I want to say Senator Johnson's office  
21      was approached historically as an office that got an  
22      earmark on behalf of these corporations to do work in  
23      South Dakota.

24              Now, that predates the date of the  
25      conspiracy. That's when things were, I think, flush

1 and robust.

2           There's no dispute that each of these  
3 companies, whether it was in South Dakota or  
4 elsewhere, up until the time the conspiracy started,  
5 they were doing actual work. They were doing actual  
6 work even when the criminal conduct initiated. They  
7 were doing real work, real science.

8           THE COURT: They just weren't doing the work  
9 according to their application.

10           MR. JEHANGIRI: Right. And as painfully  
11 detailed in the Information and the factual basis  
12 statements, that's where the fraud was taking place.

13           But, yes, I think Senator Johnson's office  
14 was an office that was approached and actually  
15 obtained earmarks on behalf of at least one of these  
16 corporations.

17           THE COURT: Thank you. Mr. Lusky, do you  
18 know anything more about the earmarks?

19           MR. LUSKY: I do, Your Honor. I can confirm  
20 it was, in fact, Senator Johnson's office, and I've  
21 seen documents showing the interaction with that  
22 office during that time period.

23           THE COURT: Thank you. And the earmarks  
24 quit because of a change in policy within Congress  
25 that they no longer were doing earmarks?

1           MR. LUSKY: I believe that's exactly right.  
2           I don't know the details of that, but I believe it was  
3           a congressional change.

4           THE COURT: So after considering all of the  
5           evidence, everything that was included within the  
6           presentence report, I've decided that the amount of  
7           restitution that the parties agreed on, a little over  
8           a million, is the appropriate amount of restitution  
9           here.

10           It's very seldom that I see entities come  
11           forward and pay all of the restitution before  
12           sentencing, so I think that that shows full  
13           acceptance, full cooperation, and an acknowledgment  
14           that things were done correctly in the past, and after  
15           2012 things weren't done properly.

16           But from everything that I know about the  
17           case, it indicates to me that the contracts initially  
18           were set up for a good, valid purpose, that really  
19           good science and good work was done as part of those  
20           contracts.

21           Unfortunately, when the climate changed in  
22           Congress, the parties didn't adjust what their  
23           applications were.

24           I do also want to note with regard to  
25           Black Hills Nanosystems Corporation, that the report

1 did verify that at the peak of the work, there were 12  
2 employees actually working here in South Dakota.

3 So after considering all of that, I find  
4 that there will be no fine. The main reason for that  
5 is that the corporation no longer exists, and there's  
6 no entity to impose a fine on.

7 But, also, in light of the facts of this  
8 case, and the fact that although there were some  
9 falsities within the applications, the work was still  
10 being done, and it wasn't a total fraud or sham.

11 Normally I would have the client stand at  
12 this time to impose the sentence. Mr. Lusky, since  
13 you are the one here, you get to stand.

14 MR. LUSKY: My first time, Your Honor.

15 THE COURT: Based on the constitutional and  
16 statutory authority vested in this Court, it's the  
17 judgment of the Court that Black Hills Nanosystems  
18 Corporation is hereby ordered to pay restitution to  
19 National Science Foundation in the amount of  
20 \$812,656.00, National Aeronautics and Space  
21 Administration in the amount of \$129,942.77, and the  
22 Department of Energy in the amount of \$146,819.83, for  
23 a total of \$1,084,418.60.

24 The restitution will be paid joint and  
25 several with Laserlith Corporation, Blue Sky

1 Engineering, Incorporated, and William Tang.

2 It is further ordered that you must pay to  
3 the United States a special assessment of \$400, which  
4 is due immediately.

5 Mr. Lusky, are you aware of any reason why  
6 the sentence can't be imposed as I stated?

7 MR. LUSKY: I am not, Your Honor.

8 MR. CARLUCCI: Your Honor, just for the  
9 record, you said William Tang. I assume you meant  
10 Wallace Tang.

11 THE COURT: Yes. Thank you. With that  
12 correction, the judgment will be imposed as I stated.

13 And if you think a mistake was made, the  
14 notice of appeal would have to be filed with the Clerk  
15 of Courts Office within 14 days. Under the plea  
16 agreement, you probably gave up the right to appeal  
17 because I sentenced within the range.

18 Do you understand that?

19 MR. LUSKY: We do, Your Honor.

20 THE COURT: You can be seated then.

21 MR. LUSKY: Thank you, Your Honor.

22 THE COURT: Then the attorney for Laserlith  
23 Corporation.

24 MR. STERN: Your Honor, Noah Stern.

25 THE COURT: Thank you. I had a different

1 name written down for the attorney, so I appreciate  
2 you letting me know.

3 Mr. Stern, did you have a chance to review  
4 the presentence report with your client?

5 MR. STERN: Yes, Your Honor.

6 THE COURT: And there were no objections?

7 MR. STERN: No objections, Your Honor.

8 THE COURT: And the government had no  
9 objections?

10 MR. JEHANGIRI: No objections, Judge.

11 THE COURT: There is not an applicable total  
12 offense level or criminal history level. The  
13 probationary period could be one to five years.

14 The fine range is \$1.8 million to  
15 \$3,421,136.00. Restitution has been requested in the  
16 amount of \$1,084,418.60, and there's a \$400 special  
17 assessment.

18 Counsel, do you both agree?

19 MR. JEHANGIRI: Yes, Your Honor.

20 MR. STERN: Yes, Your Honor.

21 MR. COURT: Mr. Stern, would you like to  
22 speak on behalf of your client?

23 MR. STERN: Yes, Your Honor, just very  
24 briefly.

25 I think all of the discussion with respect

1 to Black Hills is also applicable to Laserlith.

2 Laserlith was a real corporation doing work  
3 in North Dakota. It had many employees in  
4 North Dakota. Laserlith also has paid restitution  
5 in full.

6 For all of the reasons mentioned by  
7 Mr. Lusky and Mr. Jehangiri, we don't think that a  
8 fine is warranted or really applicable in this case.

9 THE COURT: Thank you. Mr. Jehangiri, did  
10 you want to add anything?

11 MR. JEHANGIRI: Your Honor, I would  
12 incorporate the comments that I had previously with  
13 respect to Black Hills Nanosystems. They apply here  
14 equally to Laserlith Corporation.

15 The representative, corporate  
16 representative, Sine Chao, much like Gina Kim, took  
17 individual responsibility insofar as they signed a  
18 statement of facts -- these are additional things that  
19 I neglected to say.

20 They each signed a factual basis statement  
21 individually and are in negotiations currently on the  
22 civil side of things, too. I want the Court to know  
23 that. They're going to be signing an identical  
24 statement of facts with regard to their pretrial  
25 diversion. So it's all out there.

1           Sine Chao, the corporate representative who  
2       pled guilty on behalf of Laserlith, and Gina Kim, both  
3       signed those statement of facts as far as our plea  
4       agreement negotiations, and it just goes to show you  
5       how seriously they've taken this matter.

6           For that, Your Honor, I would incorporate  
7       all the same numbers and recommendations to Laserlith  
8       as I did with Black Hills.

9           THE COURT: Laserlith also accepted  
10      responsibility early. They paid their share of the  
11      restitution in full before the change of plea.

12           It is no longer a corporation. It's been  
13      defunct since November of 2015. They were a valid and  
14      viable corporation prior to that, and they had  
15      employees in North Dakota.

16           I should mention that all of the entities  
17      that I'm sentencing today were involved in really  
18      valuable scientific work prior to the point that they  
19      started having financial problems.

20           So because Laserlith has fully accepted  
21      responsibility and paid the restitution in full and  
22      has been cooperative, I am not going to impose a fine.

23           Mr. Stern, if you would please stand, I'm  
24      going to state the sentence, but I won't impose it  
25      until counsel has had an opportunity to state any



1 objections.

2 Based on the constitutional and statutory  
3 authority vested in this Court, it's the judgment of  
4 the Court that Laserlith Corporation is hereby ordered  
5 to pay restitution to the National Science Foundation  
6 in the amount of \$812,656.00, the National Aeronautics  
7 and Space Administration in the amount of \$124,942.77,  
8 and the Department of Energy in the amount of  
9 \$146,819.83, for a total amount of \$1,084,418.60.

10 The restitution will be paid joint and  
11 several with Black Hills Nanosystems Corporation,  
12 Blue Sky Engineering, Incorporated, and Wallace Tang.

13 It is further ordered that you must pay to  
14 the United States a special assessment of \$400, which  
15 is due immediately.

16 Mr. Stern, are you aware of any reason why  
17 the sentence can't be imposed as I stated?

18 MR. STERN: No, Your Honor.

19 THE COURT: Mr. Jehangiri?

20 MR. JEHangIRI: No, Your Honor.

21 THE COURT: Then the sentence will be so  
22 imposed. You may be seated.

23 MR. STERN: Thank you, Your Honor.

24 THE COURT: Mr. Stern, if you would let your  
25 client know that if they are going to appeal, they

1 need to file the notice of appeal within 14 days from  
2 today with the Clerk of Courts Office. They probably  
3 don't have the right to appeal because of the  
4 provision in the plea agreement.

5 Do you understand that?

6 MR. STERN: Yes, Your Honor.

7 THE COURT: So next will be the matter  
8 dealing with Blue Sky Engineering, Incorporated.

9 Mr. Carlucci, did you have a chance to  
10 review the presentence report with your client?

11 MR. CARLUCCI: I did, Your Honor.

12 THE COURT: And there were no objections?

13 MR. CARLUCCI: There were no objections.

14 THE COURT: And the government had no  
15 objections?

16 MR. JEHANGIRI: No, Your Honor.

17 THE COURT: The total offense level and  
18 criminal history category are not applicable.

19 The advisory guideline range, probation is  
20 an option for one to five years. The fine range is  
21 \$1.8 million to \$3,421,136.00.

22 Restitution has been requested in the amount  
23 of \$1,084,418.60, and there's a \$400 special  
24 assessment.

25 Counsel, do you both agree?

1 MR. JEHANGIRI: Yes, Your Honor.

2 MR. CARLUCCI: Yes, Your Honor.

3 THE COURT: Mr. Carlucci, did you want to  
4 speak on behalf of Blue Sky Engineering?

5 MR. CARLUCCI: Very briefly, Your Honor.

6 I join in the comments of my colleagues for  
7 Black Hills and Laserlith, as well as the government,  
8 and as well as the comments made by the Court.

9 I have nothing further to add, Your Honor.

10 MR. JEHANGIRI: I have nothing to add,  
11 Your Honor.

12 THE COURT: Blue Sky also no longer exists,  
13 although I failed to write down the date when they  
14 became defunct.

15 It did do really important scientific work,  
16 including microelectromechanical systems, microchips,  
17 modules, boards, solar cells, substations. It was  
18 organized in North Dakota.

19 It has fully paid the restitution that was  
20 owed prior to the change of plea sentencing. So I see  
21 no reason to impose a fine, because the corporation no  
22 longer exists, and it accepted full responsibility by  
23 repaying the amounts that were owed prior to the  
24 change of plea.

25 So, Mr. Carlucci, if you would please stand.

1 MR. CARLUCCI: Your Honor, do you want  
2 Mr. Tang to stand, as well, since he's the corporate  
3 representative?

4 THE COURT: Sure.

5 MR. CARLUCCI: Thank you.

6 THE COURT: Based on the constitutional and  
7 statutory authority vested in this court, it's the  
8 judgment of the Court that Blue Sky Engineering,  
9 Incorporated, is hereby ordered to pay restitution to  
10 the National Science Foundation in the amount of  
11 \$812,656.00, National Aeronautics and Space  
12 Administration in the amount of \$124,942.77, and the  
13 Department of Energy in the amount of \$146,819.83, for  
14 a total amount of \$1,084,418.60.

15 The restitution will be paid joint and  
16 several with Laserlith Corporation, Black Hills  
17 Nanosystems Corporation, and Wallace Tang.

18 It is further ordered that you must pay to  
19 the United States a special assessment of \$400, which  
20 is due immediately.

21 Counsel, are either of you aware of any  
22 reason why the sentence can't be imposed as I stated?

23 MR. JEHANGIRI: No, Your Honor.

24 MR. CARLUCCI: No, Your Honor.

25 THE COURT: Then it will be so imposed, and

1       you can be seated.

2               And the plea agreement contained a waiver of  
3       the right to appeal unless the Court sentenced the  
4       defendant above the advisory guideline range. I did  
5       not do that, so the client probably does not have the  
6       right to appeal.

7               But if they think they do and they want to  
8       pursue it, they need to file the notice of appeal  
9       within 14 days from today with the Clerk of Courts.

10              Do you understand that?

11              MR. CARLUCCI: We understand that,  
12       Your Honor. Thank you.

13              THE COURT: And, finally, the sentencing  
14       dealing with Mr. Tang.

15              Mr. Carlucci, you asked for some amendments  
16       to the report to be made, and those were made. It  
17       appears there aren't any further objections. Is that  
18       correct?

19              MR. CARLUCCI: That's correct, Your Honor.

20              THE COURT: And the government had no  
21       objections?

22              MR. JEHANGIRI: That's correct.

23              THE COURT: Under the report, the total  
24       offense level was determined to be a 9, and the  
25       defendant is in criminal history category I.

1           The advisory guideline range for sentencing  
2       is 4 to 10 months in custody. The defendant is in  
3       Zone B. Supervised release is one to three years.  
4       The probationary term is one to five years.

5           The fine range is \$2,000 to \$20,000.  
6       Restitution has been requested in the amount of  
7       \$1,084,418.60, and there's a \$100 special assessment.

8           Counsel, do you both agree?

9           MR. JEHANGIRI: Yes, Your Honor.

10          MR. CARLUCCI: Yes, Your Honor.

11          THE COURT: Mr. Carlucci, would you like to  
12       speak on behalf of your client?

13          MR. CARLUCCI: I would, Your Honor.

14          THE COURT: And before you do that, I wanted  
15       to note that I did read some letters that were  
16       submitted on his behalf; letters from Daniel Trojan,  
17       the president of Trojan Industries, a letter from  
18       Tin Le, D.W. Chen, Stephen Sherman, Maisy Tang, and  
19       Daniel Hyman, and June Udell.

20          Anything else I should have reviewed that I  
21       haven't identified?

22          MR. CARLUCCI: No, Your Honor.

23          THE COURT: Now if you'd like to speak on  
24       behalf of your client.

25          MR. CARLUCCI: Thank you, Your Honor.

1           Your Honor, Mr. Tang has lived a life  
2       without any trouble prior to this incident.

3           I think it's fair to say that this has been  
4       an extraordinarily traumatic experience for him.  
5       He'll talk about that in a moment.

6           Obviously he's here. He's sorry for the  
7       conduct. He's learned his lesson.

8           As the government has made clear, he's  
9       cooperated with the government in its investigation  
10      and took responsibility. He worked hard with his  
11      colleagues to come up with the restitution.

12          He's in the process of trying to put his  
13      life back together.

14          I think that I can't say it any better.  
15      I'll let Mr. Tang say it for himself.

16          Thank you, Your Honor.

17          THE COURT: Mr. Tang, did you want to say  
18      anything?

19          DEFENDANT TANG: Yes. Your Honor, I made a  
20      horrible mistake. I am truly sorry for what I did.  
21      The consequences of my mistake have been something  
22      that I could never ever have imagined.

23          The company that my former colleagues and I  
24      worked so hard to build for 15 years suddenly  
25      collapsed. Many of the ex-employees made it many

1 months before they found another job.

2 I personally had a mental breakdown, which  
3 caused me to have a horrible accident in 2015. The  
4 physical damage to my body took five surgical  
5 procedures and more than two years to recover from.

6 What is more unfortunate, however, having  
7 the consequences to my friends and to my family.

8 I lost one friend, who started this business  
9 with me, and he probably committed suicide. He had  
10 two six-year-old daughters. Sorry. To this date, I  
11 am still not sure if he took his life.

12 The stress of what happened also caused my  
13 divorce in 2016. The same stress may have caused my  
14 ex-wife to live with a permanent medical condition  
15 that required more than six hours of surgery in 2017.

16 I will have to live with these consequences  
17 for the rest of my life.

18 I still have nightmares almost every night  
19 about what happened, and I will never forget what  
20 happened.

21 I am very, very sorry, and this will never  
22 happen again. Thank you.

23 THE COURT: Thank you. Mr. Jehangiri?

24 MR. JEHangIRI: Your Honor, as a matter of  
25 just the procedural history here, this case started



1 out and I contacted counsel. Mr. Carlucci, I think  
2 immediately, expressed his client's desire to resolve  
3 this in a manner that I think has been established,  
4 and the product of that is here today.

5 I think Mr. Tang's acceptance of  
6 responsibility inures to his benefit. I know he's  
7 pled guilty to a federal felony. That is no laughing  
8 matter. He paid restitution in full. But all of this  
9 took place pre-indictment.

10 Also, I think his conduct and acceptance of  
11 responsibility inures to the benefit of Gina Kim and  
12 Sine Chao.

13 I think Mr. Tang stepping up to the plate  
14 and accepting his role as the head of these  
15 corporations, or this one corporation that had many  
16 sort of tentacles or many umbrellas, if you will, and  
17 operated throughout South Dakota and elsewhere, I  
18 think that brought this case to where we are today.

19 It's a serious matter. He pled guilty to  
20 wire fraud. I think we fashioned a plea that will  
21 allow the Court to impose, and I recommend, a term of  
22 probation consistent with the terms of the plea  
23 agreement.

24 I think as far as punitive measures, I leave  
25 it to the Court to impose a fine within the range.

1           Mr. Tang has accepted responsibility, again,  
2       pre-indictment. I think that is a rarity.

3           But I think his ability to take those steps,  
4       to accept responsibility, not only on behalf of  
5       himself and his corporation and his piece of this, but  
6       also I think it saved a long, prolonged legal battle  
7       for the others that were involved.

8           Whether they were witnesses or just pawns in  
9       the scheme when the fraud took place, this would have  
10      been a long legal battle.

11          So the resources that were saved all should  
12      insure to Mr. Tang's benefit at sentencing here today.

13          The same numbers apply with regard to  
14      restitution on behalf of each of the corporations. I  
15      would ask the Court to impose that -- it's already  
16      been paid -- and to please reflect that in the  
17      judgment for each of the three federal victim  
18      agencies.

19          That's all I have, Your Honor.

20          THE COURT: Thank you.

21          Mr. Tang, I can tell you that, particularly  
22      in fraud cases, it is not very often that I see  
23      someone who comes in and accepts responsibility  
24      immediately and tries to make amends as best as you  
25      can.

1           As a result, there was a pre-indictment  
2     plea. I hardly ever see that in a fraud case.

3           Usually people in a fraud think they can  
4     talk their way out of it, that they can convince  
5     somebody that what they did was really not fraud, that  
6     it was really legitimate.

7           So to me, the fact that you accepted full  
8     responsibility right away and wanted to resolve  
9     things, without the government going through a lot of  
10    work, is incredible.

11          You are an incredibly bright man who was  
12    trying to use your intellectual capability to make the  
13    world better for all of us. It's unfortunate that  
14    this all had to happen, that you lost the funding in  
15    the manner that it had been received in the past, and  
16    that that impacted the research that you were trying  
17    to do.

18          I'm sorry that you lost your friend. I can  
19    tell, by your reaction to what happened and how it  
20    impacted you personally, that it had a very  
21    significant impact on you, also. I just hope that  
22    you're able to move forward now and start rebuilding.

23          Because you have accepted full  
24    responsibility and have paid back over a million  
25    dollars in restitution, I am not going to impose a

1 fine. I'm not going to impose additional restitution  
2 above what you've already paid.

3 You're in a Zone B category under the  
4 guidelines, so the four to ten months custody range is  
5 something that could be served in home detention.

6 But based on the fact that you are in  
7 criminal history category I, you're 54 years old, this  
8 is really the first crime that you've committed, I  
9 don't really see any reason why I should put you in  
10 home detention.

11 I'm just going to put you on probation,  
12 without a home detention requirement.

13 In light of the fact I'm not imposing a  
14 fine, though, I do want you to do some community  
15 service. I'm going to have you do 80 hours of  
16 community service, and have that done within a  
17 six-month time period.

18 You have also requested permission to travel  
19 outside of the United States while you're on  
20 probation. I'm going to direct to the probation  
21 office that I will approve any out-of-the-country  
22 travel that you need to do.

23 If you would please stand, I'm going to  
24 state the sentence, but I won't impose it until  
25 counsel has had an opportunity to state any

1 objections.

2 Based on the constitutional and statutory  
3 authority vested in this Court, it's the judgment of  
4 the Court that the defendant, Wallace Tang, is hereby  
5 placed on probation for a term of two years.

6 While you're on probation, you must not  
7 commit another federal, state, or local crime.

8 You must not unlawfully possess a controlled  
9 substance.

10 Mandatory drug testing is suspended, because  
11 I think you pose a low risk of future substance abuse.

12 You will need to cooperate in the collection  
13 of DNA.

14 You must comply with the standard conditions  
15 that have been adopted by this court and the following  
16 special conditions:

17 You must complete 80 hours of community  
18 service work at the direction of the United States  
19 Probation Office, which needs to be completed within  
20 six months of today.

21 You must pay restitution to the National  
22 Science Foundation in the amount of \$812,656.00, the  
23 National Aeronautics and Space Administration in the  
24 amount of \$124,942.77, and the Department of Energy in  
25 the amount of \$146,819.83, for a total of

1       \$1,084,418.60.

2               The restitution will be paid joint and  
3       several with Laserlith Corporation, Black Hills  
4       Nanosystems Corporation, and Blue Sky Engineering,  
5       Incorporated.

6               It is further ordered that you must pay to  
7       the United States a special assessment of \$100, which  
8       is due immediately.

9               Counsel, are either of you aware of any  
10      reason why the sentence can't be imposed as I stated?

11              MR. JEHangIRI: No, Your Honor.

12              MR. CARLUCCI: No, Your Honor.

13              THE COURT: Then it will be so imposed. You  
14      may be seated.

15              Mr. Tang, in your plea agreement you gave up  
16      the right to appeal unless I sentenced you higher than  
17      your advisory guideline range. I sentenced you below  
18      that range, so you probably do not have the right to  
19      appeal.

20              But if you think I made a mistake and you  
21      want to have another court review what I did, you  
22      would need to file a notice of appeal within 14 days  
23      from today with the Clerk of Courts Office.

24              Do you understand that?

25              THE DEFENDANT: Yes, I understand,

1 Your Honor.

2 THE COURT: I did want everybody to be aware  
3 of the fact that the reason I did not impose any fines  
4 or sentence Mr. Tang to custody isn't because I don't  
5 think this is a serious crime. I do think it is  
6 serious.

7 But I am just really impressed by the fact  
8 that the parties were all able to pay over a million  
9 dollars in restitution and had that paid and accepted  
10 full responsibility early on.

11 Anything further from either side?

12 MR. JEHANGIRI: No, Your Honor.

13 MR. CARLUCCI: No, Your Honor.

14 MR. STERN: No, Your Honor.

15 MR. LUSKY: No, Your Honor.

16 MR. BILLION: No, Your Honor.

17 THE COURT: We'll be adjourned.

18 (End of proceedings at 9:36 a.m.)  
19  
20  
21  
22  
23  
24  
25

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF SOUTH DAKOTA :SS CERTIFICATE OF REPORTER  
3 SOUTHERN DIVISION

4 I, Jill M. Connelly, Official United States  
5 District Court Reporter, Registered Merit Reporter,  
6 Certified Realtime Reporter, and Notary Public, hereby  
7 certify that the above and foregoing transcript is the  
8 true, full, and complete transcript of the  
9 above-entitled case, consisting of Pages 1 - 31.

10 I further certify that I am not a relative or  
11 employee or attorney or counsel of any of the parties  
12 hereto, nor a relative or employee of such attorney or  
13 counsel, nor do I have any interest in the outcome or  
14 events of the action.

15 IN TESTIMONY WHEREOF, I have hereto set my  
16 hand this 26th day of February, 2019.

17 /s/ Jill M. Connelly

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21  
22  
23  
24  
25  
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